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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/055,783	01/22/2002	Peter Pal Varga	T9376.DIV2	8745

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EXAMINER

WILLSE, DAVID H

ART UNIT

PAPER NUMBER

3738

DATE MAILED: 03/12/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/055,783

Applicant(s)

VARGA ET AL

Examiner

Dave Willse

Art Unit

3738

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 22 January 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 32-51 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 32-51 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

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The Information Disclosure Statement of January 22, 2002, is acknowledged and will be reviewed once the file of parent application serial no. 09/592,072 becomes available to the examiner.

The abstract of the disclosure is objected to because of the inclusion of legal phraseology involving "said" (line 6). Correction is required (MPEP § 608.01(b)).

The Applicant has failed to specifically point out the support in the original disclosure for each of the claims added since the filing of parent application serial no. 09/592,072 (M.P.E.P. 714.02) and must do so in response to the instant Office action.

Claims 32-38 and 42-51 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claim 32, line 3, "annulus" is misspelled. Similar spelling errors were noted in other claims.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 41 is rejected under 35 U.S.C. 102(b) as being clearly anticipated by Aesculap, DE 299 01 611 U1.

Claims 32-35, 37-40, 48, and 51 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Kyocera, JP 9-122160 A. Regarding claim 34 and others, attention is directed to Figure 2(a) and rod or plate **B**, which is deemed to comprise rod *members*.

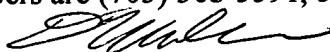
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Claims 36, 41, 44-47, 49, and 50 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kyocera, JP 9-122160 A. The further limitations of claim 36 would have been immediately obvious, if not inherent, from the location of the spacing member 1 as depicted in Figure 2(b). Regarding claim 41, an arcuate insertion path along an imaginary arcuate centerline of the arcuate spacing member 1 would have been obvious to the ordinary practitioner in order to minimize the incision size and internal tissue trauma. Regarding claim 44, the rod or plate B being supplemented or replaced by a *plurality* of rods would have been obvious in order, for example, to stabilize other portions or sides of the spinous processes. The "self-bone" T (JPO English abstract; Figure 2(b)) being obtained via the well known step set forth in present claim 45 or 49 would have been immediately obvious to the ordinary practitioner because portions of vertebral bodies are typically removed to allow implant insertion or because providing harvested bone in advance simplifies the surgical procedure. Regarding claims 46 and 50, lamina spreaders are likewise commonly used in the art and would have been obvious in order to facilitate the insertion of the implants 1 and B. Regarding claim 47, trial spacers are well known and would have been obvious to help ensure that the installation of the implant 1 results in proper and stable alignment of the spine.

Claims 42-43 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Brantigan, US 4,834,757.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dave Willse, whose telephone number is (703) 308-2903. The supervisor, Corrine McDermott, can be reached at (703) 308-2111. The receptionist's phone number is (703) 308-0858, and the main FAX numbers are (703) 305-3591, 3590.

dhw: D. Willse  
March 7, 2003

  
**DAVE WILLSE**  
**PRIMARY EXAMINER**  
**ART UNIT 3738**